

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of

Revision of Part 22 and Part 90 of the
Commission's Rules to Facilitate Future
Development of Paging Systems

WT Docket No. 96-18

Implementation of Section 309(j) of the
Communications Act -- Competitive
Bidding

PP Docket No. 93-253

TO: The Commission

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**REPLY COMMENTS OF MOTOROLA
ON THE INTERIM LICENSING PROPOSAL**

Motorola hereby submits its reply comments on the interim licensing proposal for future paging operations during the pendency of the above-captioned proceeding.¹

Motorola wholeheartedly agrees with the overwhelming majority of commenters who argue that the application "freeze" will cause profound economic harm to the paging industry and disrupt the efficient provision of service to the public. In addition, the freeze as presently constructed simply eliminates the ability of companies and public safety agencies to install internal use, private paging systems. As these actions seriously affect Motorola's business without compelling public interest benefits, we strongly urge the FCC to reconsider its freeze and allow this industry to compete and serve the public even as the Commission moves forward with its new regulatory environment for the messaging industry.

¹ See *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, FCC 96-52 (Feb. 9, 1996) (Notice of Proposed Rule Making) ("Notice").

I. Background.

In compliance with its responsibilities established in Title VI of the Omnibus Budget Reconciliation Act of 1993, the FCC has initiated this proceeding to provide regulatory symmetry for private carrier and common carrier paging systems as well as to install a competitive bidding policy for mutually exclusive applications. As the Commission adopts new rules to implement geographical service areas that will inevitably lead to auctions on channels already heavily occupied with existing licensees, it has announced that it will suspend the acceptance of applications for most new facilities in order to deter speculation.² The freeze is effective immediately and applies to paging channels in all frequency bands with only nationwide channels exempted.³ As part of the adopted interim licensing policy, existing carriers are permitted to deploy internal “fill-in” sites provided that such transmitters will not extend their existing interference contours.⁴ However, the FCC is asking for comments on whether it should also allow existing carriers to construct secondary sites outside of their existing service areas.⁵

Approximately 60 comments were filed in response to the FCC’s expedited schedule established for the interim licensing policy. Overall, the industry expressed great concern over the establishment of any freeze. Large carriers objected to their limited ability to install new stations to meet new customer demand.⁶ Smaller carriers objected to what they considered as favoritism to larger carriers thus affecting their ability to compete.⁷

² *Id.* at ¶139.

³ *Id.* at ¶142.

⁴ *Id.* at ¶140.

⁵ *Id.* at ¶143.

⁶ *See e.g.*, Comments of Pagemart, Inc. at 3; Comments of Paging Network at 5; Comments of MobileMedia Communications Inc. at 7.

⁷ *See e.g.*, Comments of TSR Paging Inc. at 8, Emergency Petition for Immediate Withdrawal of Freeze filed by Coalition for a Competitive Paging Industry at 15.

Manufacturers objected to the impact on overall sales.⁸ To the best of Motorola's knowledge, all parties objected to at least some portion of the FCC's decision -- not one party fully supported the Commission's action.

II. Reply Comments.

Based on its review of the record and on its position as a world-leader in the manufacturing of paging devices and infrastructure technology, Motorola is convinced that the FCC's interim licensing policy will harm the U.S. paging industry. As is well documented in the opening round comments, the delivery of paging services is a highly competitive industry. Indeed, according to the FCC's own analyses, most metropolitan areas have at least 12 facilities-based carriers.⁹ Along with resellers and pending competition from both narrowband and broadband PCS service providers, this robustly competitive market has led to the development of new and innovative products at reduced costs to the consumer. Undoubtedly, the paging industry is an FCC success story.

This competitive environment requires carriers to be ever aggressive in deploying new transmitters to serve new customers. By injecting itself into this operational dynamic through the application freeze, the FCC will be directly intervening and affecting the competitive marketplace balance. While secondary licensing will provide legitimate relief in limited situations, carriers will find significant financial risks involved, particularly given the uncertainty surrounding the future regulatory environment. Motorola estimates that this current freeze on system expansions over a prolonged period will result in tens of millions of dollars in lost revenue to the paging industry.¹⁰

⁸ See e.g., Comments of Glenayre Technologies, Inc.; Comments of the Personal Communications Industry Association at 19.

⁹ See Comments of PCIA at 8 citing *1995 CMRS Competition Annual Report*, 10 FCC Rcd at 8854.

¹⁰ Indeed, the pending freeze promises to be of significant duration even for the exclusive use channels at 929 MHz and 931 MHz which most easily lend themselves to the geographical licensing scheme proposed by the FCC. Given the existing comment periods, the fastest scenario imaginable would result in new rules effective for these channels at the beginning of June, 1996. Allowing additional time for providing public notice, any auction

As presently constructed, the paging freeze will seriously impact the deployment of new, spectrum efficient technology. In order to remain competitive with providers of advanced messaging services, many existing paging carriers are converting to the FLEX™ protocol to greatly increase data delivery speeds within the existing 25 kHz channel. The migration to FLEX™, which will generate a significant amount of paging sales in 1996, requires additional base stations to maintain the existing service area.¹¹ By limiting new stations to existing, defined interference contours, the FCC will be preventing carriers from voluntarily employing more efficient technology. This result will harm manufacturers, carriers and consumers as FLEX™ offers the simplest means of expanding system capacity without the need for additional spectrum.

Another area harmed by the freeze is the impact to private internal-use paging systems operated on shared channels in the 150 MHz, 450 MHz and 929 MHz frequency bands under Part 90. Under the terms of the proposed interim licensing arrangements, fill-in sites are permitted where they do not extend the defined interference contour of the existing system. This policy is only relevant on exclusive use channels, therefore, operations on the shared channels are provided no relief from the freeze. Motorola finds this particularly troubling because the shared Part 90 paging frequencies provide a low cost spectrum opportunity for hospitals, fire departments, manufacturers and other business entities that need a higher level of reliability than typically offered by carriers. Emergency medical providers can not tolerate a 15 minute delay during the busy hour to receive a page.

would not likely start before the beginning of September, 1996. Allowing 3 - 4 months for the auctions to conclude and additional time for the filing and processing of applications by the auction winners means that, at a minimum, carriers will be required to wait over one year before they can refocus on the delivery of service as opposed to regulatory issues. Of course, the Commission's limited resources are now being taxed in other directions as well so these best estimates are exceedingly optimistic.

¹¹ Due to the higher baud rate of the protocol, FLEX™ receivers require a higher signal level than existing POCSAG receivers. Therefore, to maintain the existing service area of a system, additional base stations are needed at the periphery. The deployment of such stations, however, would violate the terms of the FCC's interim licensing policy because they will likely expand the existing theoretical interference contour.

While multiple market solutions do exist, the shared private channels serve the needs of thousands of public safety entities whose operational facilities are threatened to be frozen for the next several years. Since the high level of incumbency does not leave these channels as ideal candidates for geographical licensing policies, Motorola strongly encourages the FCC to exempt these channels from the freeze.

III. Recommendations.

Motorola understands the FCC's motivation for imposing a freeze: to deter speculators from acquiring for free what should be acquired through auction. While Motorola will not yet comment on the FCC's proposed geographical licensing proposals and auction rules, it believes that the freeze disproportionately impacts existing licensees for only limited public interest benefits. As the Commission itself notes, there are few, if any, vacant paging channels available in most populated areas of the country. More importantly, there is precious little "white space" left to auction. The Commission must better balance these facts when deciding upon changes to the existing licensing policies.

To remedy the ill effects of the freeze, Motorola recommends that the Commission adopt the following policies as part of its interim licensing scheme:

1. Immediately lift the freeze for all shared channels available under Part 90 of the Rules. Given the incredible numbers of existing licensees, the FCC should be disinclined to implement a geographical licensing arrangement on these channels thus eliminating any need for a freeze.
2. Immediately lift the freeze for all common carrier paging channels below 931 MHz. Having been available since the 1950's, licensing activities on these channels have achieved a steady state status. With little white space available for incumbents or new participants, any gains to be achieved through geographical licensing and auction are few.
3. Allow existing operators on the exclusive use channels at 929 MHz and 931 MHz limited expansion capabilities. While the comments propose several solutions, Motorola recommends that new sites should be permitted where the proposed service area is adjacent to a pre-existing service area of the same system for which authorization was filed for prior to the freeze. This will eliminate potential arbitrary technical interpretations of the location of the existing interference contour and allow carriers to meet new demands over the course of the next year or more. It will also have negligible effect on auction values.

4. Process all non-mutually exclusive applications filed with the Melon Bank on or before the adopted date of the *Notice*. These applications represent non-speculative attempts to satisfy the public's needs for paging services and pose little threat to the value of the paging channels.

The above modifications to the FCC's interim licensing policy will not ameliorate all negative aspects of the paging freeze, however, it will allow limited expansion of existing systems and help mitigate any competitive disadvantages local and regional carriers will face with respect to nationwide paging carriers and narrowband PCS licensees.

IV. Conclusion.

The opening comments contain ample evidence to compel the FCC to significantly reduce the impact of its interim licensing policy by exempting all shared channels and allowing limited service area expansion on exclusive use channels. This will allow the paging industry to continue to respond to dynamically changing market forces and will help mitigate the potentially huge financial impact that an inflexible freeze would impose on the industry.

Respectfully Submitted,



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